

1 UNITED STATES CODE TITLE 25

2 - INDIANS CHAPTER 21 -

3 INDIAN CHILD WELFARE

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43 § 1901. Congressional findings

44 Recognizing the special relationship between the United States and the Indian tribes

45 and their members and the Federal responsibility to Indian people, the Congress finds

46 (1) that clause 3, section 8, article I of the United States Constitution provides that

47 "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes

48 and, through this and other constitutional authority, Congress has plenary power over

49 Indian affairs;

50 (2) that Congress, through statutes, treaties, and the general course of dealing with

51 Indian tribes, has assumed the responsibility for the protection and preservation of
52 Indian tribes and their resources; (3) that there is no resource that is more vital to the
53 continued existence and integrity of Indian tribes than their children and that the
54 United States has a direct interest, as trustee, in protecting Indian children who are
55 members of or are eligible for membership in an Indian tribe; (4) that an alarmingly
56 high percentage of Indian families are broken up by the removal, often unwarranted,
57 of their children from them by nontribal public and private agencies and that an
58 alarmingly high percentage of such children are placed in non-Indian foster and
59 adoptive homes and institutions; and (5) that the States, exercising their recognized
60 jurisdiction over Indian child custody proceedings through administrative and judicial
61 bodies, have often failed to recognize the essential tribal relations of Indian people
62 and the cultural and social standards prevailing in Indian communities and families.

63 § 1902. Congressional declaration of policy

64 The Congress hereby declares that it is the policy of this Nation to protect the best
65 interests of Indian children and to promote the stability and security of Indian tribes
66 and families by the establishment of minimum Federal standards for the removal of
67 Indian children from their families and the placement of such children in foster or
68 adoptive homes which will reflect the unique values of Indian culture, and by
69 providing for assistance to Indian tribes in the operation of child and family service
70 programs.

71 § 1903. Definitions

72 For the purposes of this chapter, except as may be specifically provided otherwise, the
73 term -

74 (1) "child custody proceeding" shall mean and include - (i) "foster care placement"
75 which shall mean any action removing an Indian child from its parent or Indian

76 custodian for temporary placement in a foster home or institution or the home of a
77 guardian or conservator where the parent or Indian custodian cannot have the child
78 returned upon demand, but where parental rights have not been terminated; (ii)
79 "termination of parental rights" which shall mean any action resulting in the
80 termination of the parent-child relationship; (iii) "preadoptive placement" which shall
81 mean the temporary placement of an Indian child in a foster home or institution after
82 the termination of parental rights, but prior to or in lieu of adoptive placement; and
83 (iv) "adoptive placement" which shall mean the permanent placement of an Indian
84 child for adoption, including any action resulting in a final decree of adoption. Such
85 term or terms shall not include a placement based upon an act which, if committed by
86 an adult, would be deemed a crime or upon an award, in a divorce-custody proceeding,
87 of custody to one of the parents or to a third party.

88 (2) "extended family member" shall be as defined by the law or custom of the Indian
89 child's tribe or, in the absence of such law or custom, shall be a person who has
90 reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle,
91 brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second
92 cousin, or stepparent; (3) "Indian" means any person who is a member of an Indian
93 tribe, or who is an Alaska Native and a member of a Regional Corporation as defined
94 in 1606 of title 43; (4) Notwithstanding state law to the contrary, "Indian child" means
95 any unmarried person who is under age eighteen and is either (a) a member of an
96 Indian tribe at the time of the filing of a child custody proceeding or (b) is eligible for
97 membership in an Indian tribe and is the biological child of a parent who is a member
98 of an Indian tribe at the time of the filing of the child custody proceeding; (5) "Indian
99 child's tribe" means (a) the Indian tribe in which an Indian child is a member or
100 eligible for membership or (b), in the case of an Indian child who is a member of or

101 eligible for membership in more than one tribe, the Indian tribe with which the Indian
102 child has the more significant contacts; (6) "Indian custodian" means any Indian
103 person who has legal custody of an Indian child under tribal law or custom or under
104 State law or to whom temporary physical care, custody, and control has been
105 transferred by the parent of such child; (7) "Indian organization" means any group,
106 association, partnership, corporation, or other legal entity owned or controlled by
107 Indians, or a majority of whose members are Indians; (8) "Indian tribe" means any
108 Indian tribe, band, nation, or other organized group or community of Indians
109 recognized as eligible for the services provided to Indians by the Secretary because of
110 their status as Indians, including any Alaska Native village as defined in section
111 1602(c) of title 43; (9) "parent" means any biological parent or parents of an Indian
112 child or any Indian person who has lawfully adopted an Indian child, including
113 adoptions under tribal law or custom. It does not include the unwed father where
114 paternity has not been mutually acknowledged or recognized with the child's mother
115 or otherwise adjudicated ~~established~~ under state law; (10) "reservation" means Indian
116 country as defined in section 1151 of title 18 and any lands, not covered under such
117 section, title to which is either held by the United States in trust for the benefit of any
118 Indian tribe or individual or held by any Indian tribe or individual subject to a
119 restriction by the United States against alienation; (11) "Secretary" means the
120 Secretary of the Interior; and (12) "tribal court" means a court with jurisdiction over
121 child custody proceedings and which is either a Court of Indian Offenses, a court
122 established and operated under the code or custom of an Indian tribe, or any other
123 administrative body of a tribe which is vested with authority over child custody
124 proceedings.

125 § 1911. Indian tribe jurisdiction over Indian child custody proceedings

126 (a) Exclusive jurisdiction

127 An Indian tribe shall have jurisdiction exclusive as to any State over any child
128 custody proceeding involving an Indian child who resides or is domiciled within the
129 reservation of such tribe, except where such jurisdiction is otherwise vested in the
130 State by existing Federal law. Where an Indian child is a ward of a tribal court, the
131 Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or
132 domicile of the child.

133 (b) Transfer of proceedings; declination by tribal court

134 In any State court proceeding for the foster care placement of, or termination of
135 parental rights to, an Indian child not domiciled or residing within the reservation of
136 the Indian child's tribe, the court, in the absence of good cause to the contrary, shall
137 transfer such proceeding to the jurisdiction of the tribe, absent objection by either
138 parent, upon the petition of either parent or the Indian custodian or the Indian child's
139 tribe, which must be filed within thirty days of the service of the petition commencing
140 the initial out of home placement proceedings. A preadoptive or adoptive placement
141 proceeding may be transferred only with the agreement of all the parties to the
142 proceeding: Provided, That such transfer shall be subject to declination by the tribal
143 court of such tribe.

144 (c) State court proceedings; intervention

145 In any State court proceeding for the foster care placement of, or termination of
146 parental rights to, an Indian child, the Indian custodian of the child and the Indian
147 child's tribe shall have a right to intervene at any point in the proceeding.

148 (d) Full faith and credit to public acts, records, and judicial proceedings of Indian
149 tribes

150 The United States, every State, every territory or possession of the United States, and

151 every Indian tribe shall give full faith and credit to the public acts, records, and
152 judicial proceedings of any Indian tribe applicable to Indian child custody
153 proceedings to the same extent that such entities give full faith and credit to the public
154 acts, records, and judicial proceedings of any other entity.

155 § 1912. Pending court proceedings

156 (a) Notice; time for commencement of proceedings; additional time for preparation

157 In any involuntary proceeding in a State court, where the court knows or has reason to
158 know that an Indian child is involved, the party seeking the foster care placement of,
159 or termination of parental rights to, an Indian child shall notify the parent or Indian
160 custodian and the Indian child's tribe, by ~~registered~~ certified mail with return receipt
161 requested, of the pending proceedings and of their right of intervention. The Indian
162 child's tribe shall have thirty days upon receipt of such notice to file with the court a
163 conclusive determination of whether the child is an Indian child. In the absence of
164 such tribal determination, the court shall make its own determination, which shall be
165 conclusive. If the identity or location of the parent or Indian custodian and the tribe
166 cannot be determined, such notice shall be given to the Secretary in like manner, who
167 shall have fifteen days after receipt to provide the requisite notice to the parent or
168 Indian custodian and the tribe. No foster care placement or termination of parental
169 rights proceeding shall be held until at least ten days after receipt of notice by the
170 parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or
171 Indian custodian or the tribe shall, upon request, be granted up to twenty additional
172 days to prepare for such proceeding.

173 (b) Appointment of counsel

174 In any case in which the court determines indigency, the parent or Indian custodian
175 shall have the right to court appointed counsel in any removal, placement, or

176 termination proceeding. The court may, in its discretion, appoint counsel for the child
177 upon a finding that such appointment is in the best interest of the child. Where State
178 law makes no provision for appointment of counsel in such proceedings, the court
179 shall promptly notify the Secretary upon appointment of counsel, and the Secretary,
180 upon certification of the presiding judge, shall pay reasonable fees and expenses out
181 of funds which may be appropriated pursuant to section 13 of this title.

182 (c) Examination of reports or other documents

183 Each party to a foster care placement or termination of parental rights proceeding
184 under State law involving an Indian child shall have the right to examine all reports or
185 other documents filed with the court upon which any decision with respect to such
186 action may be based.

187 (d) Remedial services and rehabilitative programs; preventive measures

188 Any party seeking to effect a foster care placement of, or termination of parental
189 rights to, an Indian child under State law shall satisfy the court that ~~active~~ reasonable
190 efforts, as defined by P.L. 96-272, have been made to provide remedial services and
191 rehabilitative programs designed to prevent the breakup of the Indian family and that
192 these efforts have proved unsuccessful.

193 (e) Foster care placement orders; evidence; determination of damage to child

194 No foster care placement may be ordered in such proceeding in the absence of a
195 determination, supported by clear and convincing evidence, including testimony of
196 qualified expert witnesses, that the continued custody of the child by the parent or
197 Indian custodian is likely to result in serious emotional or physical damage to the
198 child.

199 (f) Parental rights termination orders; evidence; determination of damage to child

200 No termination of parental rights may be ordered in such proceeding in the absence of

201 a determination, supported by evidence beyond a reasonable doubt, including
202 testimony of qualified expert witnesses, that the continued custody of the child by the
203 parent or Indian custodian is likely to result in serious emotional or physical damage
204 to the child.

205 § 1913. Parental rights; voluntary termination

206 (a) Consent; record; certification matters; invalid consents

207 Where any parent or Indian custodian voluntarily consents to a foster care placement
208 or to termination of parental rights, such consent shall not be valid unless executed in
209 writing and recorded before a judge of a court of competent jurisdiction and
210 accompanied by the presiding judge's certificate that the terms and consequences of
211 the consent were fully explained in detail and were fully understood by the parent or
212 Indian custodian. The court shall also certify that either the parent or Indian custodian
213 fully understood the explanation in English or that it was interpreted into a language
214 that the parent or Indian custodian understood. Any consent given prior to, or within
215 ten days after, birth of the Indian child shall not be valid. The writing and recording
216 requirements of this subdivision do not apply where a parent voluntarily consents to a
217 preadoptive or adoptive placement.

218 (b) Foster care placement; withdrawal of consent

219 Any parent or Indian custodian may withdraw consent to a foster care placement
220 under State law at any time and, upon such withdrawal, the child shall be returned to
221 the parent or Indian custodian.

222 (c) Voluntary termination of parental rights or adoptive placement; withdrawal of
223 consent; return of custody

224 In any voluntary proceeding for termination of parental rights to, or adoptive
225 placement of, an Indian child, the consent of the parent may be withdrawn for any

226 reason at any time ~~prior to the entry of a final decree of termination or adoption~~ within
227 thirty days of the execution of such consent, ~~as the case may be,~~ and the child shall be
228 returned to the parent.

229 (d) Collateral attack; vacation of decree and return of custody; limitations

230 After the entry of a final decree of adoption of an Indian child in any State court, the
231 parent may withdraw consent thereto upon the grounds that consent was obtained
232 through fraud or duress and may petition the court to vacate such decree within the
233 time limits established by state law. Upon a finding that such consent was obtained
234 through fraud or duress, the court shall vacate such decree and return the child to the
235 parent. ~~No adoption which has been effective for at least two years may be invalidated~~
236 ~~under the provisions of this subsection unless otherwise permitted under State law.~~

237 § 1914. Petition to court of competent jurisdiction to invalidate action upon showing
238 of certain violations

239 Any Indian child who is the subject of any action for foster care placement or
240 termination of parental rights under State law, any parent or Indian custodian from
241 whose custody such child was removed, and the Indian child's tribe may petition any
242 court of competent jurisdiction to invalidate such action upon a showing that such
243 action violated any provision of sections 1911, 1912, and 1913 of this title.

244 § 1915. Placement of Indian children

245 (a) Adoptive placements; preferences

246 In any adoptive placement of an Indian child under State law, a preference shall be
247 given, in the absence of good cause to the contrary, to a placement with (1) a member
248 of the child's extended family; (2) other members of the Indian child's tribe; or (3)
249 other Indian families.

250 (b) Foster care or preadoptive placements; criteria; preferences

251 Any child accepted for foster care or preadoptive placement shall be placed in the
252 least restrictive setting which most approximates a family and in which his special
253 needs, if any, may be met. The child shall also be placed within reasonable proximity
254 to his or her home, taking into account any special needs of the child. In any foster
255 care or preadoptive placement, a preference shall be given, in the absence of good
256 cause to the contrary, to a placement with -(i) a member of the Indian child's extended
257 family; (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
258 (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing
259 authority; or (iv) an institution for children approved by an Indian tribe or operated by
260 an Indian organization which has a program suitable to meet the Indian child's needs.
261 (c) Tribal resolution for different order of preference; personal preference considered;
262 anonymity in application of preferences

263 In the case of a placement under subsection (a) or (b) of this section, if the Indian
264 child's tribe shall establish a different order of preference by resolution, the agency or
265 court effecting the placement shall follow such order so long as the placement is the
266 least restrictive setting appropriate to the particular needs of the child, as provided in
267 subsection (b) of this section.

268 (d) Good cause defined

269 ~~Where appropriate, the preference of the Indian child or parent to a foster care~~
270 ~~placement shall be considered where appropriate and may constitute good cause. :~~
271 ~~Provided, That Where a consenting parent consents to preadoptive or adoptive~~
272 ~~placement, the preferences of the parent shall constitute good cause. Good cause may~~
273 ~~also include the lack of suitable Indian homes after a prompt and diligent search, the~~
274 ~~preferences of a child of appropriate age and development, and the Indian child's~~
275 ~~extraordinary physical or emotional and developmental needs as supported by the~~

276 testimony of a qualified medical or mental health care professional ~~evidences a desire~~
277 ~~for anonymity, the court or agency shall give weight to such desire in applying the~~
278 ~~preferences.~~ Once the court makes a finding of good cause, the child's placement
279 shall not be changed unless consistent with the best interests of the child.

280 (de) Social and cultural standards applicable

281 The standards to be applied in meeting the preference requirements of this section
282 shall be the prevailing social and cultural standards of the Indian community in which
283 the parent or extended family resides or with which the parent or extended family
284 members maintain social and cultural ties.

285 (ef) Record of placement; availability

286 A record of each such placement, under State law, of an Indian child shall be
287 maintained by the State in which the placement was made, evidencing the efforts to
288 comply with the order of preference specified in this section. Such record shall be
289 made available at any time upon the request of the Secretary or the Indian child's tribe.

290 § 1916. Return of custody

291 (a) Petition; best interests of child

292 Notwithstanding State law to the contrary, whenever a final decree of adoption of an
293 Indian child has been vacated or set aside or the adoptive parents voluntarily consent
294 to the termination of their parental rights to the child, a biological parent or prior
295 Indian custodian may petition for return of custody and the court shall grant
296 such petition unless there is a showing, in a proceeding subject to ~~the provisions of~~
297 section 1912(a) of this title, that such return of custody is not in the best interests of
298 the child.

299 (b) Removal from foster care home; placement procedure

300 Whenever an Indian child is removed from a foster care home or institution for the

301 purpose of further foster care, preadoptive, or adoptive placement, such placement
302 shall be in accordance with the provisions of this chapter, except in the case where an
303 Indian child is being returned to the parent or Indian custodian from whose custody
304 the child was originally removed.

305 § 1917. Tribal affiliation information and other information for protection of rights
306 from tribal relationship; application of subject of adoptive placement; disclosure by
307 court

308 Upon application by an Indian individual who has reached the age of eighteen and
309 who was the subject of an adoptive placement, the court which entered the final
310 decree shall inform such individual of the tribal affiliation, if any, of the individual's
311 biological parents and provide such other information as may be necessary to protect
312 any rights flowing from the individual's tribal relationship.

313 § 1918. Reassumption of jurisdiction over child custody proceedings

314 (a) Petition; suitable plan; approval by Secretary

315 Any Indian tribe which became subject to State jurisdiction pursuant to the provisions
316 of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of
317 April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume
318 jurisdiction over child custody proceedings. Before any Indian tribe may reassume
319 jurisdiction over Indian child custody proceedings, such tribe shall present to the
320 Secretary for approval a petition to reassume such jurisdiction which includes a
321 suitable plan to exercise such jurisdiction.

322 (b) Criteria applicable to consideration by Secretary; partial retrocession (1) In
323 considering the petition and feasibility of the plan of a tribe under subsection (a) of
324 this section, the Secretary may consider, among other things: (i) whether or not the
325 tribe maintains a membership roll or alternative provision for clearly identifying

326 the persons who will be affected by the reassumption of jurisdiction by the tribe; (ii)
327 the size of the reservation or former reservation area which will be affected by
328 retrocession and reassumption of jurisdiction by the tribe; (iii) the population base of
329 the tribe, or distribution of the population in homogeneous communities or
330 geographic areas; and (iv) the feasibility of the plan in cases of multiracial occupation
331 of a single reservation or geographic area. (2) In those cases where the Secretary
332 determines that the jurisdictional provisions of section 1911(a) of this title are not
333 feasible, he is authorized to accept partial retrocession which will enable tribes to
334 exercise referral jurisdiction as provided in section 1911(b) of this title, or, where
335 appropriate, will allow them to exercise exclusive jurisdiction as provided in section
336 1911(a) of this title over limited community or geographic areas without regard for
337 the reservation status of the area affected.

338 (c) Approval of petition; publication in Federal Register; notice; re-assumption period;
339 correction of causes for disapproval

340 If the Secretary approves any petition under subsection (a) of this section, the
341 Secretary shall publish notice of such approval in the Federal Register and shall notify
342 the affected State or States of such approval. The Indian tribe concerned shall
343 re-assume jurisdiction sixty days after publication in the Federal Register of notice of
344 approval. If the Secretary disapproves any petition under subsection (a) of this section,
345 the Secretary shall provide such technical assistance as may be necessary to enable
346 the tribe to correct any deficiency which the Secretary identified as a cause for
347 disapproval.

348 (d) Pending actions or proceedings unaffected

349 Assumption of jurisdiction under this section shall not affect any action or proceeding
350 over which a court has already assumed jurisdiction, except as may be provided

351 pursuant to any agreement under section 1919 of this title.

352 § 1919. Agreements between States and Indian tribes

353 (a) Subject coverage

354 States and Indian tribes are authorized to enter into agreements with each other
355 respecting care and custody of Indian children and jurisdiction over child custody
356 proceedings, including agreements which may provide for orderly transfer of
357 jurisdiction on a case-by-case basis and agreements which provide for concurrent
358 jurisdiction between States and Indian tribes.

359 (b) Revocation; notice; actions or proceedings unaffected

360 Such agreements may be revoked by either party upon one hundred and eighty days'
361 written notice to the other party. Such revocation shall not affect any action or
362 proceeding over which a court has already assumed jurisdiction, unless the agreement
363 provides otherwise.

364 § 1920. Improper removal of child from custody; declination of jurisdiction; forthwith
365 return of child: danger exception

366 Where any petitioner in an Indian child custody proceeding before a State court has
367 improperly removed the child from custody of the parent or Indian custodian or has
368 improperly retained custody after a visit or other temporary relinquishment of custody,
369 the court shall decline jurisdiction over such petition and shall forthwith
370 return the child to his parent or Indian custodian unless returning the child to his
371 parent or custodian would subject the child to a substantial and immediate danger or
372 threat of such danger.

373 § 1921. Higher State or Federal standard applicable to protect rights of parent or
374 Indian custodian of Indian child

375 In any case where State or Federal law applicable to a child custody proceeding under

376 State or Federal law provides a higher standard of protection to the rights of the parent
377 or Indian custodian of an Indian child than the rights provided under this subchapter,
378 the State or Federal court shall apply the State or Federal standard.

379 § 1922. Emergency removal or placement of child; termination; appropriate action
380 Nothing in this subchapter shall be construed to prevent the emergency removal of an
381 Indian child who is a resident of or is domiciled on a reservation, but temporarily
382 located off the reservation, from his parent or Indian custodian or the emergency
383 placement of such child in a foster home or institution, under applicable State law, in
384 order to prevent imminent physical damage or harm to the child. The State authority,
385 official, or agency involved shall insure that the emergency removal or placement
386 terminates immediately when such removal or placement is no longer necessary to
387 prevent imminent physical damage or harm to the child and shall expeditiously
388 initiate a child custody proceeding subject to the provisions of this subchapter,
389 transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child
390 to the parent or Indian custodian, as may be appropriate.

391